v. *Springville Tp.* (Mich.), 153 N. W. 690. For discussion, see 1 VA. LAW REV. 252. But when the invitee is aware of the danger and remains in the conveyance, then he is himself guilty of contributory negligence. *Rebilliard* v. *Minneapolis, etc., R. Co.*, 216 Fed. 503. If, however, the guest does not realize the dangerous rate of speed at which he is being driven he is not negligent. *Beach* v. *City of Seattle* (Wash.), 148 Pac. 39. The degree of care and precaution which it is incumbent on the invitee to use depends on the circumstances of each particular case, and is for the jury to determine. See *Hermann* v. *Rhode Island Co.* (R. I.), 90 Atl. 813; *Carnegie* v. *Great Northern R. Co.*, 128 Minn. 14, 150 N. W. 164.

In cases where the relationship existing between the parties is such that it may be presumed that the occupant of the car exercised, or could exercise, control over the driver, the doctrine of imputed negligence applies. *Van Horn* v. *Simpson* (S. D.), 153 N. W. 883. See *Lawrence* v. *Sioux City* (Ia.), 154 N. W. 494. Thus, a policeman who negligently fails to prevent the driver, whose guest he is, from exceeding the speed limit cannot recover for injuries received in an accident caused by the car being driven at an excessive rate of speed. *Hubbard* v. *Bartholomew*, 163 Ia. 58, 144 N. W. 13. But the negligence of the husband is not imputed to the wife merely by virtue of the relationship existing between them. *Fisher* v. *Ellston* (Ia.), 156 N. W. 422. Yet some courts hold that where it can be shown that a wife specifically entrusted herself to her husband's care, his negligence is imputed to her. *Fogg* v. *New York, etc., Ry. Co.* (Mass.), 111 N. E. 960. Where two persons are engaged in a joint enterprise it may be presumed that they exercise control over each other. Thus, where two brothers hired a rig to drive to their father's home, the negligence of the driver was imputed to the other brother. *Christopherson* v. *Minneapolis, etc., Ry. Co.*, 28 N. D. 128, 147 N. W. 791. Merely because two people are on a pleasure trip together is not such a joint enterprise as is necessary to impute the negligence of the driver of the vehicle to his guest. *Withey* v. *Fowler*, 164 Ia. 377, 145, N. W. 923.

PARTNERSHIP — ABORTIVE CORPORATION — LIABILITY OF PROMOTERS TO THIRD PERSONS.—Defendants were associates in the promotion of a banking corporation. One of them, without authority from the others, incurred liabilities by purchasing stationary and supplies for the bank. The project was abandoned, and the associates were sued for the materials purchased. *Held*, all who participated in the project to found the corporation are liable as partners for the debts. *Hall Lithographing Co.* v. *Crist* (Kan.), 160 Pac. 198.

Persons who associate for the purpose of organizing a corporation and who form neither a *de jure* nor a *de facto* corporation are liable as partners for debts incurred in the abortive enterprise. *Harrill* v. *Davis*, 168 Fed. 187, 22 L. R. A. (N. S.), 1153; *Whipple* v. *Parker*, 29 Mich. 369. The reason for this rule seems to be that since all parties intended their contracts to be binding, in order to prevent injustice, the courts consider it necessary to hold that the persons acting as a corporation when none existed are bound in the only capacity in which they had power to transact business, that is, as partners. *Central Nat'l Bank* v. *Sheldon*, 86 Kan.

460, 121 Pac. 340. See *Abbott* v. *Omaha Smelting, etc., Co.*, 4 Neb. 416. But this gives to the contract an effect which no one intended it to have.

This doctrine has been justly limited to those who have knowingly made themselves parties to the assumption of corporate powers, or have been guilty of negligence in not knowing of the use of their names in connection with such. *Stafford Nat. Bank* v. *Palmer*, 47 Conn. 443; *Fay* v. *Noble*, 7 Cush. (Mass.) 189. See *Wechselberg* v. *Flour City Nat'l Bank* (C. C. A.), 64 Fed. 90. And, further, even though it be found as a fact that one promoter authorized his associates, or others, to hold him out as personally responsible, the additional inquiry is necessary whether or not the credit was extended on the faith of his being personally responsible, unless he was a partner in fact. *Bailey* v. *Macaulay*, 13 Q. B. 815. See *Thompson* v. *First Nat. Bank*, 111 U. S. 529, 537. Accordingly, the mere participation in the signing and filing of articles of incorporation does not render a party liable for debts contracted by any of his associates who, without authority express or implied, assumes the right to act as the agent of the abortive corporation and contracts debts as such, even though he act in the name of the corporation. *Farmers' State Bank* v. *Kuchs*, 163 Mo. App. 606, 147 S. W. 862; *Stafford Nat. Bank* v. *Palmer, supra*. And the mere announcement that several persons are acting together to organize a corporation does not justify the inference that one has authorized the others to pledge his credit in furtherance of their purpose. *Reynell* v. *Lewis*, 15 M. & W. 517. Thus, the reasonable conclusion is that when an association omits to take the necessary steps to perfect its organization as a corporation, the members are not, *ex vi termini*, partners. *Wood* v. *Argyll*, 6 Man. & G. 928; *Fay* v. *Noble, supra*. See *Arnold* v. *Conklin*, 96 Ill. App. 373. The first cases on the subject held the opposite view. *Holmes* v. *Higgins*, 1 B. & C. 74; *Lucas* v. *Beach*, 1 Man. & G. 417. But they were soon overruled. *Ex parte Capper*, 1 Sim. (N. S.) 178.

This doctrine does not necessarily work injustice on the creditors of such organizations; because in all cases at least those who authorize the debts in question are liable under rules of positive law applicable to the transaction under investigation, without reference to the attempted incorporation. *Rutherford* v. *Hill*, 22 Ore. 218, 29 Pac. 546, 29 Am. St. Rep. 596, 17 L. R. A. 549; *Wood* v. *Argyll, supra*. See 13 MICH. LAW REV. 271, 273.

There are cases which seem to be directly in conflict with this rule; but, it will be observed, that in these cases the promoters were engaged in a joint venture which under ordinary circumstances would make them liable as partners. *Tuccillo* v. *Pittelli*, 127 N. Y. Supp. 314; *Harrill* v. *Davis, supra*. Here, creditors, believing themselves to be dealing with the agents of a corporation, are not estopped to deny the existence of a corporation, and may sue the promoters as partners. *Harrill* v. *Davis, supra*. See *Guckert* v. *Hacke*, 159 Pa. St. 303, 28 Atl. 249. To justify the principal case, its decision may be placed under the ruling of this class of cases.

REAL PROPERTY—FIXTURES—WHAT CONSTITUTES.—The defendant leased a theatre for a term of years and equipped it with furnishings specially